MOTION FILED
SEP 27 1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-245

FRANK T. BARR, et al., *Plaintiffs,*

vs.

THE UNITED METHODIST CHURCH, et al., *Defendants.*

MOTION OF THE ASSOCIATION OF UNITED METHODIST THEOLOGICAL SCHOOLS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI AND BRIEF FILED IN SUPPORT THEREOF

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Pursuant to Rule 42 of the Rules of this Court, The Association of United Methodist Theological Schools ("The Association") hereby moves for leave to file a brief, a copy of which is annexed hereto, as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Petitioners Charles F. Golden, Paul W. Milhouse and James M. Walton-Myers, being those persons upon whom service of process was attempted on behalf of The United Methodist Church, a named defendant in the underlying case.

The nature of the interest of The Association in this case arises out of the interest of its component members. The Association is a voluntary unincorporated association composed of thirteen graduate schools of theology approved by the University Senate and by the Division of Ordained Ministry of The United Methodist Church for "affiliation" with The United Methodist Church. The member institutions of The Association are as follows: Boston University School of Theology, Boston, Massachusetts; Drew University, The Theological School, Madison, New Jersey; Duke University, The Divinity School, Durham, North Carolina; Emory University, Candler School of Theology, Atlanta, Georgia; Gammon Theological Seminary, Atlanta, Georgia; Garrett-Evangelical Theological Seminary, Evanston, Illinois; The Iliff School of Theology, Denver, Colorado; Methodist Theological School in Ohio, Delaware, Ohio; Perkins School of Theology, Southern Methodist University, Dallas, Texas; Saint Paul School of Theology Methodist, Kansas City, Missouri; School of Theology at Claremont, Claremont, California; United Theological Seminary, Dayton, Ohio; Wesley Theological Seminary, Washington, D.C. "Affiliation" is a requirement for eligibility for receiving donations from the General Conference and from any of the Annual Conferences, or United Methodist general boards, foundations or other agencies. The chief executive officer of each institution represents the school in The Association. Eight of these institutions are independent corporate entities; the remaining five are parts of larger universities which are also independent corporate entities. The function of the schools is to provide graduate-professional training to students with a vocation to the Christian ministry.

The interest of The Association on behalf of its members is as follows: The schools receive financial support from members of the churches through annual and general conferences and other agencies of the denomination. In return the schools provide a resource for the training and education of ministers and for research and scholarship in areas of concern to the denomination in fulfilling its stated mission as an arm of Christ's church in the world. Failure to review and reverse the lower court decision will inhibit the religious training of ministers of the denomination through alteration of the denomination's style of life and operation; adversely affect the financial security of these institutions; and cause the drying up of sources of charitable giving both within and without the denomination which could result in the collapse of these institutions. This would all be accomplished not by direct claims against the institutions but by a judgment against the denominational name and flowing downward from that against the institutions.

The unprecedented attempt here to lump all United Methodist units together and treat their individual assets as association assets of some superordinate fictional entity called "The United Methodist Church" poses a direct threat to the tradition of charitable giving to support worthy causes in general, and particularly to the sources of support necessary for the continuation of private education, including theological education, in the United States.

One impact of the decision below might be to transform and reorganize The United Methodist Church into a polity that ignores the more than 200 years of Methodist development and tradition. This would be

contrary to the anticipation and goals of students presently enrolled in or contemplating enrollment in these theological schools preparing for the ministry. These students have no connection with the subject matter of the $366 million claim arising out of the Pacific Homes Corporation lifetime care contracts. Nevertheless, the decision below would have a serious and blighting effect on their careers, subjecting them to the taint of the fraud allegation, the possibility of a substantial judgment, and the prospect of an altered religious polity. This is a threat to their commitment and idealism as well as that of the ten million persons who call themselves United Methodists.

The adverse impact presented by the decision below which includes a religious denomination under the term "unincorporated association" should be immediately rectified so as to prevent disastrous impact upon members, bodies and educational institutions such as the members of The Association in continuing their work in the religious education field.

The Association believes that its interest will not adequately be presented by the parties since the decision below will adversely affect religious educational training, the financial security of these institutions and the charitable giving necessary for the operation of the schools, and these aspects will not be directly addressed in the other briefs. The purpose of the brief for which leave to file is sought herein is to supplement the briefs previously filed on behalf of petitioners and other *amici curiae*.

The brief will address four principal points as follows: (1) the adverse effect of the lower court decision

upon students being trained for the ministry in United Methodist theological schools, and the questions raised by the decision under the Establishment and Free Exercise clauses of the First Amendment; (2) the adverse effect of the lower court decision on the assets and property of United Methodist schools and other separate denominational institutions, boards and the like, and the questions raised by the decision under the Due Process clause of the Fourteenth Amendment; (3) the immediate and disastrous effect that the failure to reverse would have upon charitable giving by local churches and others to theological schools affiliated with The United Methodist Church, thereby constricting the free exercise of religion by damaging the vital function of education of its ministers; and (4) the need for immediate review by this Court in order to avoid irreparable harm to the theological schools and to the denomination during *lis pendens*.

There is a related matter coming into this Court in a petition for Writ of Certiorari which has been filed in *Milhouse, et al.* v. *United States District Court, et al.*, Supreme Court of the United States, Docket No. 78-1855 (the "*Trigg* case"). The essential issues raised in this petition are also raised in that case, and it is respectfully requested that the *Trigg* matter be considered and consolidated with this case by this Court.

Counsel for petitioners have consented to this Motion pursuant to a letter which has been filed with the Clerk of the Court. The consent of counsel for respondents was requested but has not been forthcoming.

Respectfully submitted,

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Supreme Court of the United States

All Counsel Listed on the Annexed Certificate of Service

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INTEREST OF *AMICUS CURIAE*

The interest of *amicus curiae* is set forth in the Motion of The Association of United Methodist Theological Schools For Leave To File Brief As *Amicus Curiae* In Support Of Petition For Writ of Certiorari, and will not be reproduced here.

STATEMENT OF THE CASE

The statement of the case contained in the Petition for Writ of Certiorari ("Petition") is adequate and complete and need not be duplicated at length here. Succinctly, the Petitioners, individuals upon whom

service of process was attempted in the name of The United Methodist Church ("the denomination") moved to quash service upon them and dismiss the denomination as a party defendant. The trial court, Superior Court of California, San Diego County, Honorable Ross G. Tharp, J., entered a Minute Order decision granting Petitioners' motion on the grounds that the denomination "is no more than a 'spiritual confederation' and is not a jural entity or unincorporated association subject to suit" under the California Code of Civil Procedure and that a contrary decision would "have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs." (Appendix B of the Petition at A-22 to 23.) The California Court of Appeal, Fourth Appellate District, Division One, reversed. *Barr v. United Methodist Church,* 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (1979) (Appendix A to Petition), and the California Supreme Court denied hearing. Subsequently, Petitioners filed the Petition for review by this Court and filed an answer to the consolidated amended complaint under protest and in order to avoid the entry of a default against the denomination.

SUMMARY OF ARGUMENT

The organization of The United Methodist Church ("the denomination") is connectional, not authoritarian or hierarchical. This organization arises out of the historical development of the denomination and is inextricably bound up with its doctrines and beliefs. This unique form of organization is jeopardized by the lower court decision, which seeks to reorganize the denomination into a unitary, centralized structure capable of defending itself as a single jural entity.

The decision violates the establishment and free exercise clauses of the First Amendment as applied to the states by the Fourteenth Amendment and raises serious questions concerning the scope and nature of permissible scrutiny by the civil courts of forms of religious organization. The impact of the lower court decision on United Methodist institutions and on the tradition of private chartiable giving in the United States in general could be devastating. Immediate review of the decision is required to prevent further harm to these institutions and traditions.

ARGUMENT

Point I

The Court should grant review in this case because the imposition by the Court below of a hierarchical structure on The United Methodist Church changes the denomination's historical connectional structure by judicial fiat and thereby raises important questions of first impression under the Establishment and Free Exercise clauses of the First Amendment applied to the states by the Fourteenth Amendment. Students who choose to enter training for the ministry in the United Methodist schools because of the style and method of life involved in the denomination will be disaffected if the nature of the denomination is changed in violation of their rights of free exercise of religion.

A. Background and Impact on Constitutional Guarantees

The issue of how the Church or a church should be organized has been one of the most divisive in the history of Christendom. The reason for this is that the nature of the organization is intimately bound up with

the doctrinal question of the individual's relationship to God and what the church's intermediary role in that relationship should be. In England, where The United Methodist Church finds its origins, this issue was the subject of bitter contention for more than two hundred years following the Protestant Reformation. The central point of dispute was the role of the episcopacy as intermediary between the person and God. Among the consequences of this contention were the so-called Puritan revolution, the English civil war, and the so-called Glorious Revolution. The First Amendment to the Constitution and its free exercise and establishment clauses were among the fruits of this strife, and resulted from the hard-won lessons learned from it.

A Court is simply not free to roam around in the *Book of Discipline* as if it were the bylaws of a secular unincorporated association, construe the terms therein as if they were terms whose meaning is determined by the secular law, ignoring the historical context in which the religious association adopted its form of organization and rules of discipline. The connectional organization of The United Methodist Church (the "denomination") is rooted in the foundation of the Church by John Wesley, a clergyman of the Church of England, in the mid-Eighteenth Century. From England, Methodism spread to Ireland and then to America. In the beginning, Wesley thought of his people not as constituting a church but simply as forming so many societies composed of people inspired by his sermons and desiring to adhere to the Methodist discipline, which offered active spiritual participation in contrast to the lifeless ritualism into which it seemed that the Church of England had lapsed. The preachers were not ordained, and the members were required to

receive the Sacraments in the Church of England. The yearly meetings of people called Methodists are still held in various places (now about 73 places in the United States of America plus additional places in other countries) and called "annual conferences", which are still the fundamental bodies of the Church (United Methodist Constitution, Division Two, Section I, Article IV; also Section VII, Article II). There is not now and never has been one national or international headquarters, central office, chief executive office or officer, or any controlling entity representing the entire United Methodist Church. Only the General Conference may speak for the denomination. That General Conference is a quadrennial meeting lasting about two weeks consisting of no less than 600 nor more than 1,000 delegates, one-half of whom are ministers and one-half of whom are laity. The General Conference is given legislative power over all matters distinctively connectional, but the powers are restricted and limited. Powers not specifically given to the General Conference are to reside in the annual conferences, individually and separately.

Methodist units are incorporated for specific functions and purposes, such as holding property for preaching and worship, or for the fulfillment of educational, charitable, service, or missionary functions and purposes. The General Conference is not now and never has been incorporated as a legal entity nor is it a continuing control body. Its membership changes substantially from general conference to general conference. To structure the denomination according to secular legal views rather than ecclesiastical ones would do violence to established church polity and to the denomination's self-understanding. The avoidance of

incorporation is and has been historically a deliberate choice consistent with the nature of the connectional relationship. For the early American church, valid meetings were held in England as well as in America. The equal validity of these several meetings is of major significance, establishing a loose relationship or "connection" but maintaining the identity and independent authority of each "meeting" or "conference". The validity of these several yearly meetings or conferences shows that there is no central authority or unified body which is valid for the whole movement. This principle has remained true and effective from that day until now, and it is still valid and characteristic of United Methodism. The courts do not understand this.

As to the relationship of the theological schools to the denomination, the oldest standardizing body for higher education in the nation is the University Senate of The United Methodist Church. This body is recognized by the General Conference as the body to determine which educational institutions may claim affiliation with The United Methodist Church. Recognition of affiliation gives the institution the right to seek financial support from United Methodists and from agencies of The United Methodist Church. "Affiliation" in United Methodism does not connote control, domination or ownership of the "affiliated" unit or institution. There is no financial responsibility or legal responsibility given to the institution on behalf of the denomination, or given to the denomination on behalf of the institution. The use of the name "United Methodist" does create a fellowship, an identity, a connection, a common purpose for worship and service. Individual church bodies, incorporated under law and functioning under their charters and according to stated purposes,

do now and should continue to be held legally responsible under the law. There are thousands of those units in United Methodism but collectively they are not a single body called an "unincorporated association" or otherwise.

The history and practice of The United Methodist Church is not that of an existing overarching entity which has responsibility for any or all church units which bear the United Methodist name; each body, agency or organization, including those within this Association of United Methodist Theological Schools, bears its own responsibility.

There was nothing known as "The United Methodist Church" until 1968 when members of the denominations known as "The Methodist Church" and "The Evangelical United Brethren Church" merged to form "The United Methodist Church," at which time there were agreements made between the two groups to operate together under the common name. Historically, the composition of the denomination has been extremely fluid and it has and continues to function under various forms of the connectional church structure as above described.

Students who choose to enter training through the United Methodist schools do so in large part because of the style and method of life involved in the manner of operation of The United Methodist Church as well as its philosophy of a loose horizontal structure rather than a vertical one. If the nature of the denomination should be changed by judicial fiat to be a monolithic structure, this would alter their religious preference, desires and goals in violation of their First Amendment rights of free exercise of religion. Furthermore,

a charge of fraud against a whole denomination not organized with an executive to defend and speak for it will have an immediate unfavorable, seriously damaging impact on members of the denomination and would-be ministers. The practical effect is a final one at this stage since to litigate the matter of standing over many years will mean that a whole theological school generation will be affected in the interim.

B. Constitutional Principles

This case and the related *Trigg* case raise what appears to be a question of first impression in this Court concerning the application of the establishment and free exercise clauses of the First Amendment as applied to the states under the Fourteenth Amendment. Heretofore, the inquiry concerning to what extent the civil courts are permitted to intrude into the area of religious doctrinal disputes has taken place in the context of intra-church disputes. *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952), where the dispute was between two Russian Orthodox factions over the right to the use and occupancy of church property in New York; *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Church,* 393 U.S. 440 (1969), involving a property dispute occasioned by the withdrawal of local churches from a general church organization; *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970), involving a property dispute between a general church and secessionist congregations; *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 695 (1976), involving the removal and defrocking of a bishop and the reorganization of a diocese; and *Jones* v. *Wolf,* —— U.S. ——, 99 S. Ct. 3020 (1979), involving a property dispute between two local church factions. In all of these cases, the courts have been presented with a situation where their task was to ratify a decision taken by a church group; that is, two solutions were presented to the court by church groups and the court was to choose one of them. By contrast, this case involves an atttempt by outside, non-church plaintiffs, and by the lower court, to impose a reorganization from outside, or to impose their conception of the reality of the church organization upon the church. It is submitted that such an intrusion poses the threat of the most serious kind of state interference in church affairs since the Constitution was ratified, and it appears to The Association of United Methodist Theological Schools ("The Association") that to countenance it would constitute no less than the establishment of a church order by judicial fiat.

In the present posture of the case, certain high officials of United Methodist agencies have been told that they are agents of The United Methodist Church and as such must answer on its behalf. Under the Discipline of The United Methodist Church, however, they are forbidden to do this and as a plain matter of fact they cannot do this. "No person, no paper, no organization has the authority to speak for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution." *The Book of Discipline of The United Methodist Church* (1976), ¶ 612(1). The United Methodist Church simply has never been and is not organized in a fashion that permits these officials to act for the denomination, to speak for it or to bind the members by their acts. Although the Petitioners have been constrained to file an answer in order to avoid an entry of default against

the denomination, they have done so under protest, denying that they can represent the denomination.

This case, like the related *Trigg* case for which a Petition for Certiorari is also pending before this Court, puts into sharp focus the constitutional problem posed last term by the dissenting members of this Court in *Jones* v. *Wolf*, —— U.S. ——, 99 S.Ct. 3020 (1979). *Wolf* held that a state could constitutionally adopt "neutral principles of law", for example, "well-established concepts of trust and property law familiar to lawyers and judges," as a means of adjudicating intra-church property disputes. However, the case was remanded to the Supreme Court of Georgia for an articulation of the Georgia law upon which it had grounded its decision that the right to possess the disputed church property belonged to a schismatic faction consisting of the majority of the members of a local Presbyterian congregation. 99 S.Ct. at 3027-29.[1]

The dissenting members of this Court found this decision troublesome. The dissent suggests that the neutral principles approach is a sort of evidentiary rule, permitting examination of the religious documents of the church "in purely secular terms" only, in order to discover, for example, if an identifiable

[1] In essence, this Court approved the decision of the state court if based on a rebuttable presumption that the identity of the local church was determined by majority representation (presumably a neutral principle); on the other hand, if Georgia law required the determination to be governed by the ecclesiastical law of the Presbyterian Church, then the civil court must, under the First and Fourteenth Amendments, defer to the decision of the commission appointed by the Presbytery in order to avoid deciding questions of church doctrine. Note that this takes as a given that the organization of the Presbyterian Church is hierarchical.

trust has been created in them. The dissent set forth the Constitutional problem raised as follows:

> The constitutional documents of churches tend to be drawn in terms of religious precepts. Attempting to read them "in purely secular terms" is more likely to promote confusion than understanding. . . . Lacking [evidence cognizable under the neutral principles rule] a court will impose some rule of church government derived from state law. In the present case, for example . . . the Georgia courts could find no acceptable evidence of [the] authoritative relationship [between the Presbytery and the schismatic local church] and they imposed instead a congregational form of government determined from state law . . . The Georgia courts, as a matter of state law, granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.

99 S. Ct. at 3030 (Powell, J. dissenting).

It is respectfully submitted that the same constitutional proscription applies to the case at bar, even though the context is radically different. At least in *Wolf* the courts were confronted with a dispute requiring their adjudication for legitimate secular purposes, i. e., the need to determine the rights of possession of certain property. In the case at bar, no legitimate secular purpose has been achieved by the drastic reorganization of the United Methodist polity imposed by the Court of Appeal. Potential defendants are available to the plaintiffs without need to resort to reorganizing the United Methodist denomination.

Suppose that the General Assembly of the State of California had enacted legislation providing substantially as follows:

> The United Methodist Church is hereby constituted as a hierarchical church subject to the constitution and laws set forth in *The Book of Discipline*. There shall be three branches of United Methodist government: legislative, executive and judicial. The legislative shall be called the "General Conference." There shall be an executive board, called the "Council of Bishops," which shall be presided over by the "President of the Council of Bishops," who shall be the chief executive officer of the government. There shall be thirteen cabinet departments within the executive branch: Board of Global Ministries (department of state), General Council on Finance and Administration (department of the treasury), Board of Higher Education and Ministry (department of education) . . . . In the judicial branch, the highest court of appeal shall be called the "Judicial Council."

There is not much doubt that such legislation would be invalid under both the establishment and free exercise clauses of the First Amendment as applied to the states by the Fourteenth Amendment. In *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952) this Court struck down New York legislation purporting to designate the governing hierarchy to which all Russian Orthodox churches in the state were to subject themselves.

> By fiat [the statute] displaces one church administration with another. It passes the control of matters strictly ecclesiastical from one church authority to another. . . [The statute] directly prohibits the exercise of an ecclesiastical right, the Church's choice of its hierarchy.

344 U.S. at 119. And in *Kreshik* v. *St. Nicholas Cathedral,* 363 U.S. 190 (1960), this Court held that such an exercise of state power is proscribed regardless of whether the state acts through its legislative arm or through its judicial arm.

Yet, the legislative fantasy projected above approximates what the Court of Appeal has done in the case at bar. It has by judicial decision created a "United Methodist Church" which seems to be an amalgamation of the organizational principles of presbyterianism and the federal system of the United States. Whatever this creation by the Court of Appeal may be, it is not the ecclesiastical polity recognized and claimed by United Methodists as their own. To force them to adopt it would be intolerable as a matter of faith, as a matter of intellect and a matter of constitutional principle.

The possibility that a civil court endeavoring to interpret church doctrine could go astray was recognized by this Court over a century ago in *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679 (1871):

> Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic law, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.

80 U.S. (13 Wall.) at 729.

The perception of the *Watson* Court, including its recognition of the fact that the ecclesiastical law of a denomination is to be found in precedent, usage and custom as well as in any written constitution it may have, is amply borne out by the opinion of the Court of Appeal in the case at bar. Two examples will suffice.

Perhaps the strangest determination made by the Court of Appeal was that "a persuasive argument can be made that the Council of Bishops is equivalent to the Board of Directors of UMC." Appendix A of the Petition at A-11. The court grounded its determination on paragraph 525 of the *Book of Discipline* (the "*Discipline*") which states that the Council of Bishops is "the corporate expression of episcopal leadership in the Church and through the Church in the world." This betrays ignorance of the fact that a United Methodist bishop is not a cognate of a Roman Catholic bishop or a Protestant Episcopal bishop, and a similar misunderstanding of the meaning of "episcopal leadership" in the context of United Methodism. Methodists believe in the "general ministry of all believers," and, as stated in paragraph 110 of the *Discipline,* "There is but one ministry in Christ, but there are diverse gifts and graces in the Body of Christ (Ephesians 4:4-16). The general and representative [diaconal and ordained] orders of ministry in The United Methodist Church are complementary. Neither is subservient to the other." In short, bishops are ministers of the denomination in full connection, elected to perform a wide variety of special tasks, and accountable to a wide variety of church organizations; in order to understand what a United Methodist bishop is, it is necessary to understand that the denomination is a connectional, not a hierarchical one, and to understand what a connectional organization is.

Such an understanding cannot be achieved by trying to analogize the denomination with familiar secular organizational forms. The connectional organization of United Methodism is unique in all the world, finding its origins in the historical development of the denomination which is faintly sketched in Part A above. The failure of the Court of Appeal to grasp this is illustrated by the way its opinion consistently ignores the central role of the annual conferences in the denomination. Most striking is the manner in which the Court of Appeal treated the relationship between Pacific Homes Corporation and the Pacific and Southwest Annual Conference ("PSWAC"). Appendix A to Petition at A-14 to 16. Every item of evidence adduced in this section by the Court of Appeal indicates a close relationship between Pacific Homes Corporation and PSWAC. The Court of Appeal then concludes that this relationship requires that "UMC" be recognized as a legal entity. It seems that the Court simply fails to see that PSWAC, only one of over 100 worldwide annual conferences, is not the same as the entire denomination. Equally bizarre is the Court of Appeal's statement that "UMC is not congregational, i.e., the local church is not the highest authority in all matters of doctrine and usage. It is hierarchical. . . ." Appendix A to Petition at A-10. Again, the connectional system of annual conferences is not grasped. The court seems incapable of conceptualizing a polity that is neither strictly congregational nor hierarchical.

The Court of Appeal felt that no First and Fourteenth Amendment issue was raised by its decision. It reached this conclusion by framing the constitutional issue as if the Petitioners were seeking to use the First Amendment to immunize the units of the denomination

from civil suits involving secular disputes. Appendix A to Petition at A-18 to 19. Petitioners never sought such a goal. As has been said before, no one in the denomination seeks to escape liability where liability properly attaches.

The Court of Appeal concluded that its holding that the denomination was a suable entity was not a review of the denomination's polity nor a violation of the free exercise clause:

> There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred.

Appendix A to Petition at A-19. But obliging "UMC to defend itself" is precisely the problem, because it would require reorganizing the denomination into an organization in which some single entity or individual must answer for and defend it, which is forbidden by its doctrines.

Again, the problem was suggested by the dissent in *Jones* v. *Wolf*, —— U.S. ——, 99 S.Ct. 3020 (1979):

> The neutral-principles approach creates other difficulties. It imposes on the organization of churches additional legal requirements which in some cases might inhibit their formation by forcing the organizers to confront issues that otherwise might never arise. It could also precipitate church property disputes, for existing churches may deem it necessary, in light of today's decision, to revise their constitutional documents, charters, and deeds

> to include a specific statement of church polity in the language of property and trust law.

99 S.St. at 3031 n.2.

If this Court fails to grant review in this case, undoubtedly the United Methodist General Conference, when it next meets in 1980, wi' have to consider a wholesale redrafting of the *Discipline* to meet the exigencies of this litigation; and due to the constitutional guarantees of the First Amendment it should not be forced to do this. It is submitted that the religion clauses of the Constitution were framed in order to preserve a variety of forms of religious life. The decision below threatens one of these forms with extinction which it is respectfully submitted the Court should not permit.

Point II

The assets and property of United Methodist schools and separate denominational institutions, boards and the like, should not be placed in jeopardy and subject to a broadside judgment against the loosely designated "The United Methodist Church" in violation of their Fourteenth Amendment rights not to be deprived of their property without due process of law.

A. *Historical Background*

The first properties used primarily for Methodist purposes by John Wesley were various meeting rooms. Subsequently, he became concerned about the ownership of these properties and consulted three lawyers in London who prepared a model property deed to be used by Wesley's followers. The deed provided for specific individual trustees who would permit Wesley and those he appointed to use the property for denominational

purposes and after his death to permit the use of the property by "such persons as shall be appointed at the yearly Conference of the people called *Methodists,* in London, Bristol, Leeds, Manchester, or elsewhere . . ." The deed was printed in the 1763 minutes of the yearly Conference. The deed was enrolled in chancery under the hand and seal of Wesley, February 28, 1784. The earliest deeds to individual trustees for Methodist houses of worship in America were copied from the model deed used in England. The language of all the early deeds assumes a yearly meeting of Methodists but the meeting is not in one place only but in several places.

Property belonging to the denomination of United Methodists, whether real estate or personalty, has been primarily local. Local trustees are elected, according to the law of the church, to maintain that property and to see that it is used according to its designated purposes. Whenever property and/or monetary assets are set aside for use beyond the local churches, the property is designated for specified purposes and uses of annual, jurisdictional or general Conference Boards and other units, each of which is a jural entity. There is no overall title-holding unity called "The United Methodist Church" or by any other name. United Methodism maintains to this day a functional attitude toward property and funds. All property and funds of whatever kind are for the preaching of the gospel and the worship of God, and for the service of people and of the nation through charitable and service acts. Church property is to this day held in trust at the local and conference levels of mission consistent with the principles established in John Wesley's original "model deed."

B. Constitutional Principles

In the case at bar, the validity of that historic trust methodology is challenged. Funds voluntarily given for these specific charitable, educational or service functions could be diverted, according to the claims of plaintiffs, and used contrary to their designated purposes. Such claims are contrary to the meaning of connectionalism in United Methodism, are contrary to the polity and structure of United Methodism, and would if allowed to stand constitute a major hindrance to the charitable, educational and service activities of the Church.

If the Court should find that being related to the church and bearing the United Methodist name opens a church-related institution to levy for legal judgment entered against the denomination as a whole and unrelated to the institution's own life and activity, a school established for religious purposes might be rendered bankrupt. Out of prudence, schools may well be forced to consider dropping their church relationships in order to protect their assets and property from invasion and diversion. Considering the need of the church to have institutions for the training of its clergy and leadership, this possibility is disastrous.

If claims are allowed to stand against a denomination, not only will the self-understanding and organizational structure of United Methodism be changed but the charitable and philanthropic service of all national church bodies in the nation will be threatened and potentially ended. But there is relief to claimants having valid claims because individual church bodies, incorporated under law and functioning under their charters, are now and should continue to be held legally responsible under the law. There are thousands of those

units in United Methodism but collectively they are not a single body known as an "unincorporated association" or otherwise.

The assets and property of United Methodist schools and separate denominational institutions, boards, funds and the like should not be placed in jeopardy and made subject to a broadside claim through the medium of the loosely designated name of "The United Methodist Church" as this would be in violation of their Fourteenth Amendment rights not to be deprived of their property without due process of law. The points here raised apply with equal validity with respect to the numerous funds established by the annual and general conferences, such as the Ministerial Education Fund, the Black College Fund, the Temporary General Aid Fund and the like.

Point III

Failure to reverse will have an immediate and disastrous effect upon charitable giving by local churches and others to theological schools affiliated with The United Methodist Church, thereby constricting the free exercise of religion by damaging the vital function of education of its ministers.

The Association of United Methodist Theological Schools ("The Association") is composed of institutions which are approved by the University Senate and by the Division of Ordained Ministry of The United Methodist Church for "affiliation" with the denomination. The University Senate is an accrediting agency and the Division of Ordained Ministry is responsible for maintaining the educational standards of the United Methodist ordained ministry. "Affiliation" is a requirement for the receipt of financial support from

the various agencies of the denomination. The schools get financial support from the denomination directly from the annual conferences and, in addition, through the Ministerial Education Fund established by the 1968 General Conference in order to expand the financial support for recruitment and education and to equip the annual conferences to meet the increased demands on them in these areas. They receive an even greater share of their financial support from non-denomination sources. If the lower court decision is allowed to stand and assets of schools, boards, funds and the like are attachable, donations by Methodists and others to these church agencies, including the theological schools, will dry up, since no one will contribute to an organization which will be unable to use the money for the purposes intended and where there exists the threat that the funds donated will be diverted to pay claims against an unrelated organization.

Point IV

Immediate review by this Court is needed in order to avoid irreparable harm to the theological schools and to the denomination during lis pendens.

There is no question in this case of the membership of the denomination attempting to shield itself behind the First Amendment from liability in the civil courts for alleged wrongdoing. The separate United Methodist corporations and unincorporated associations are suable and can be held accountable. In fact, the Pacific and Southwest Annual Conference, the General Council on Finance and Administration, the Board of Global Ministries and the Division of Higher Education (all corporations) are already defendants in the underlying

case.[2] However, this case involves an unprecedented attempt in addition by an outside group to define a non-hierarchical religious denomination as a hierarchical one for its own convenience, and in the process to inflict upon innocent individual and corporate members of the deomination the penalties of alleged wrongdoing in which they were not involved and could not properly have been involved under the ecclesiastical law of the denomination.

The question raised in the Petition is a new one and of fundamental importance. If the civil courts are going to be free to inquire at large into matters of ecclesiastical polity and cognizance when purely secular disputes arise between third parties and religious associations (*See* Opinion of Mr. Justice Rehnquist as Circuit Justice in *General Counsel on Finance and Administration* v. *Superior Court*, —— U.S. ——, 99 S.Ct. 35, 38 (1979)), then surely the First and Fourteenth Amendments require that such an inquiry be fashioned in a manner and with guidelines calculated to lead to a realistic determination of the nature of the polity.

If immediate relief is not granted the theological schools and the denomination will suffer irreparable harm during *lis pendens* which might be a period of five years or more before the litigation is concluded. Adversely affected would be members of the denomination, students, schools, charitable donors, all the programs of social service, funds, agencies, boards, and other institutions of the Church. The impact on ten million Methodists, and other denominations, during

[2] Whether or not the trial court has personal jurisdiction over them all is a separate issue unrelated to the question raised by the Petition for Certiorari filed herein.

this interim period before the issue is resolved would be catastrophic. Therefore the issue should now be resolved.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted by this Court to review the judgment of the California Court of Appeal.

Respectfully submitted,

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